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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 5486

DATE COMPLAINT FILED: 7/19/04

DATE OF NOTIFICATION: 7/26/04

DATE ACTIVATED: 11/12/04

EXPIRATION OF STATUTE OF
LIMITATIONS: January 2009

COMPLAINANT:

Mark Vetanen

RESPONDENTS:

Libertarian Party of Oregon and Teresa de Bellis,
in her official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 431(4)

2 U.S.C. § 431(8)(A)(i)

2 U.S.C. § 431(9)(A)(i)

2 U.S.C. § 433(a)

2 U.S.C. § 434

11 C.F.R. § 100.5

11 C.F.R. § 100.52

11 C.F.R. § 100.111

11 C.F.R. § 102.1(d)

11 C.F.R. § 104

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a complaint filed by the former treasurer of the Libertarian Party of Oregon ("LPO") who alleges that the LPO "has never filed FEC paperwork" despite having engaged in "Federal election activity" during the 2004 election cycle. Because the LPO has never registered with, or reported its receipts and disbursements to, the Commission, we read

1 the complainant's reference to the LPO having "never filed paperwork" as an allegation that the
2 LPO is in violation of 2 U.S.C. §§ 433 and 434.

3 In support of his contention, the complainant alleges that the LPO conducted a number of
4 specific activities that would fall within the definition of "Federal election activity" at 2 U.S.C.
5 § 431(20).¹ However, the test for whether a state party organization must register and report as a
6 political committee is not whether the organization has engaged in "Federal election activity,"
7 but whether the organization has made in excess of \$1,000 in expenditures or received more than
8 \$1,000 in contributions in a calendar year. 2 U.S.C. § 431(4)(A). An "expenditure" is defined as
9 "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of
10 value made by any person for the purpose of influencing any election for Federal office."
11 2 U.S.C. § 431(9)(A)(i). *See* 11 C.F.R. § 100.111. A "contribution" is defined as "any gift,
12 subscription, loan, advance, or deposit of money or anything of value made by any person for the
13 purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). *See* 11 C.F.R.
14 § 100.52. Precise terminology here is critical because not all activity "for the purpose of
15 influencing a federal election" is "Federal election activity" and, at least for purposes of
16 determining whether a party organization is required to register and report as a political
17 committee, not all "Federal election activity" is an expenditure. *See* 11 C.F.R. § 300.36(a)(2) (a

¹ "Federal election activity" is a specific term under the Bipartisan Campaign Reform Act of 2002 ("BCRA") It is defined as any of the following activities that complainant alleges (1) voter registration activity during the 120 days before a regularly scheduled Federal election and ending on the day of the election, (2) voter identification activity, GOTV activity, and generic campaign activity that is conducted in connection with an election in which one or more candidates for Federal office appear on the ballot, (3) a public communication that refers to a clearly identified Federal candidate and that promotes, supports, attacks or opposes a candidate for that office, or (4) services provided during any month by an employee of a state, district or local party committee who spends more than 25 percent of the employee's compensated time during that month on activities in connection with a Federal election 2 U S C § 431(20), 11 C F R § 100 24. Engaging in "Federal election activity" may require a state party organization to establish certain types of accounts for receipts and disbursements and to maintain appropriate records for Commission review *See* 2 U S C § 441(b) and 11 C F R § 300 30 A state party committee may also be required to report receipts and disbursements for "Federal election activity" under 2 U S C § 434(e)(2)

1 payment of Federal funds or Levin funds for Federal election activity shall not constitute an
2 expenditure for purposes of determining whether a State, district, or local committee of a
3 political party qualifies as a political committee under 11 C.F.R. § 100.5, unless the payment
4 otherwise qualifies as an expenditure under 2 U.S.C. § 431(9)).

5 With these principles in mind, we turn to an examination of the LPO's activities to
6 determine if there is evidence sufficient to investigate whether it has made more than \$1,000 in
7 expenditures or received more than \$1,000 in contributions in a calendar year.

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 **A. Background**

10 The LPO is a state party organization that has never registered or reported with the
11 Commission; it is registered with the Oregon Secretary of State. The LPO nominated
12 candidates for federal and non-federal offices during the 2004 election cycle. The 2004 Oregon
13 ballot contained Libertarian nominees for the federal offices of President, Vice President,
14 United States Senator, and three of Oregon's five U.S. House of Representatives seats.² The
15 LPO also nominated 23 state candidates, including candidates for the statewide offices of
16 Secretary of State, State Treasurer and Attorney General, as well as candidates for Oregon State
17 Senate and House.

² Publicly available information shows that one LPO congressional candidate, Richard Whitehead, registered with the Oregon Secretary of State on May 25, 2004 as a candidate for U S Representative from Oregon's First Congressional District, but later, on August 27, 2004, withdrew his candidacy. None of the LPO's Federal candidates mentioned in the complaint registered with the Commission; it does not appear that any of them received contributions or made expenditures in excess of \$5,000. See 2 U S C § 431(2).

1 The LPO files periodic reports of receipts and disbursements, which are publicly
2 available on the Oregon Secretary of State's official website.³ See
3 <http://www.egov.sos.state.or.us/elec>. The LPO's reports show that the LPO received total
4 receipts of \$63,753 and made total disbursements of \$61,830 during the 2004 calendar year.⁴
5 *Id.* The LPO's 2004 itemized disclosure reports available on the Oregon Secretary of State's
6 website show receipts and disbursements between February 3, 2004 and November 22, 2004.⁵
7 Of the \$51,765 in itemized disbursements between February 3, 2004 and November 22, 2004, at
8 least \$49,312, or nearly 98%, would appear at first glance to have been made for what the
9 Commission's regulations would regard as salaries and wages under 11 C.F.R. § 106.7(c)(1) or
10 as administrative costs under 11 C.F.R. § 106.7(c)(2). The itemized disclosure reports also
11 show a total of \$1,100 disbursed on August 24, 2004 for "yard signs, buttons, etc." and \$362
12 disbursed in March/April 2004 for newspaper and periodical advertising.

13 B. Analysis

14 The central issue in this matter is whether the LPO qualified as a political committee
15 under the Act, as amended by BCRA. The Act requires committees to file a statement of

³ According to the website, the LPO filed its Statement of Organization with the Oregon Secretary of State on April 24, 1986

⁴ The Oregon Secretary of State's website shows several LPO disclosure reports for two elections during 2004 - a February 3, 2004 Special Election and the November 2, 2004 General Election. The website provides full itemized reports only for the November 2, 2004 General Election; it provides summary information for the February 3, 2004 Special Election. The itemized reports reflect \$51,765 of the total \$61,830 in disbursements. As most of the disbursements in the LPO's itemized reports appear as "general operational expenses" or "management services," it is likely that the bulk of the remaining \$10,065 (\$61,830 - \$51,765 = \$10,065) of the total in unitemized disbursements were for similar expenses. The website also provides summary information on LPO's receipts and disbursements from 1990 through early 2004.

⁵ The latest LPO report, the Post-Election Report, was filed on December 2, 2004 and was amended on December 30, 2004. However, no additional receipts or disbursements beyond the November 22, 2004 date were included in that amended report, and no additional reports of receipts or disbursements beyond the November 22, 2004 date are currently available on the Oregon Secretary of State's website.

1 organization within 10 days after becoming a political committee 2 U.S.C. § 433(a). *See*
2 11 C.F.R. § 102.1(d). The Act defines a political committee as any committee, club,
3 association, or other group of persons which receives contributions aggregating in excess of
4 \$1,000 during a calendar year or which makes expenditures for the purpose of influencing a
5 federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C.
6 § 431(4)(A). *See* 11 C.F.R. § 100.5. The Act and Commission regulations also require that
7 each treasurer of a political committee file periodic reports of receipts and disbursements.
8 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a).

9 However, the Commission regulations also contemplate that a state party organization
10 that makes disbursements for activities in connection with both federal and non-federal
11 elections may not have to register and report as a political committee. *See* 11 C.F.R. § 102.5.
12 Rather, organizations that are not political committees under the Act are required to keep
13 records of receipts and disbursements and, upon request, must make such records available for
14 examination by the Commission. 11 C.F.R. § 102.5(b)(1). Such organizations must also
15 demonstrate through a reasonable accounting method that, whenever such an organization
16 makes a contribution or expenditure, or payment for exempt activity, the organization has
17 received sufficient funds subject to the limitations and prohibitions of the Act to make the
18 contribution, expenditure, or payment.⁶ *Id.* *See* Explanation and Justification for Regulations
19 on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money; Final Rule;
20 67 Fed. Reg. 49064, 49073 (July 29, 2002). Nevertheless, expenses by state party organizations

⁶ As previously mentioned, a state party organization's disbursements for "Federal election activity" are not necessarily expenditures under the Act for purposes of determining whether the organization is a political committee under the Act. *See* 11 C.F.R. § 300.36(a)(2)

1 in connection with both federal and non-federal elections may be allocable pursuant to
2 11 C.F.R. § 106.7(b), which provides that party organizations that are not political committees
3 but make federal and non-federal disbursements from a single account, shall allocate their
4 federal and non-federal expenses.

5 The Commission does not appear ever to have addressed whether the Federal share of
6 disbursements by a state party organization for administrative costs or salaries, standing alone,
7 count towards the \$1,000 expenditure threshold for qualifying as a political committee under the
8 Act. We conclude that they do not. Treating the Federal share of all administrative expenses of
9 a state party organization as expenditures for purposes of the 2 U.S.C. § 431(4)(A) threshold
10 would require practically all of the small state party organizations of minor parties, and many
11 local party organizations, *see* 2 U.S.C. § 431(4)(C), to register and report as federal committees,
12 including organizations that conduct minimal federal activities. Hypothetically, a minor state
13 party organization which otherwise engaged in no federal activity could be required to register
14 and report as a federal committee, if it spent more than \$6,673.33 on combined rent and utilities
15 in a non-Presidential, non-Senate year. *See* 11 C.F.R. § 106.7(d)(2)(ii) and (iv) (minimum 15%
16 Federal share of administrative costs in non-Presidential, non-Senate year).⁷

17 Accordingly, the Federal share of the LPO's \$49,000 in itemized salaries or
18 administrative costs will not in and of itself push the LPO's "expenditures" above \$1,000 for
19 purposes of 2 U.S.C. § 431(4). We must turn, then, to an examination of the LPO's particular

⁷ We do not address here the treatment as expenditures of the Federal share of salaries and administrative costs for registered party committees, or party organizations that qualify as committees independently of their salaries and administrative costs

activities to determine whether it appears to have made \$1,000 in “expenditures” on any of them.

1. Nominating Conventions

One of the alleged LPO activities Complainant described as triggering the Act’s registration and reporting requirements is the LPO’s nomination of two federal candidates, senatorial candidate Dan Fitzgerald at its January 24, 2004 convention and congressional candidate Richard Whitehead at its May 8, 2004 convention. Information from the LPO’s website (<http://www.lporegon.org>) shows that the LPO held three nominating conventions in 2004 – the January 24 and May 8 conventions mentioned in the complaint, and a convention on August 6. A total of 28 federal and state candidates (5 federal candidates and 23 state candidates) were nominated at the three conventions. In its response, the LPO acknowledges nominating the two federal candidates mentioned in the complaint. LPO Response at 2. The LPO also acknowledges that Fitzgerald spoke at its March 2004 business convention but asserts that he spoke during a lunch recess, not during the business portion of the convention. *Id.* Information from the LPO’s website (<http://www.lporegon.org>) shows that the LPO nominated three additional congressional candidates at subsequent conventions – Jim Lindsay, Jacob Boone, and Jerry Defoe.⁸ See LPO News, September/October 2004, available at <http://www.lporegon.org/news.html>.

The available information indicates that the LPO nominated both federal and state candidates at its 2004 conventions. Had the LPO held a convention solely for the purpose of

⁸ Publicly available information shows that Lindsay registered with Oregon’s Secretary of State on August 23, 2004 as a candidate for Oregon’s Second Congressional District, and that both Boone and Defoe registered with Oregon’s Secretary of State on August 13, 2004 as candidates for Oregon’s Fourth and Fifth Congressional Districts, respectively

1 nominating Federal candidates, expenses to hold the convention might well qualify as
2 “expenditures.” However, because each convention nominated both federal and non-federal
3 candidates, their expenses are allocable as administrative expenses pursuant to 11 C.F.R.
4 § 106.7(c).⁹ As just described, the Federal share of administrative expenses of a state party
5 organization is not counted as expenditures for purposes of the \$1,000 threshold for qualifying
6 as a political committee under the Act.

7 2. Voter Registration

8 Complainant generally alleges that the LPO performed voter registration activity within
9 120 days before a regularly-scheduled federal election. In its response, the LPO denies
10 conducting voter registration drives, but acknowledges that it offers voter registration cards as a
11 public resource, as they are offered in a public library. Apparently, the LPO obtains voter
12 registration cards from the Oregon Secretary of State and puts them in a stack on a table in its
13 office for anyone who wants one. Therefore, it is questionable that the activity constitutes voter
14 registration activity under 11 C.F.R. § 100.24(a)(2). Assuming Oregon does not charge for
15 voter registration forms, the activity described by the LPO would involve no cost. Moreover,
16 the LPO’s 2004 itemized disclosure reports do not show any discernible disbursements for voter
17 registration. Therefore, it is unlikely that the LPO’s provision of voter registration cards to the
18 public involved any significant costs that would add to the \$1,000 expenditure threshold amount
19 required to trigger the Act’s registration and reporting requirement.

20

⁹ In reporting on the validity of the May convention, the LPO newsletter stated that “[t]he convention [*sic*] held in May and August are for nominating candidates to statewide and non-statewide partisan offices ” See LPO News, July/August 2004, available at <http://www.lporegon.org/news.html>

1 **3. Voter Identification, Generic Campaign and Get-Out-The-Vote**
2 **("GOTV") Activities**

3
4 Complainant also broadly alleges that the LPO performed voter identification, generic
5 campaign activities and get-out-the-vote ("GOTV") activities in connection with an election in
6 which one or more candidates for federal office appear on the ballot. The LPO asserts that it
7 performs voter identification only at nominating conventions for "credentialing delegates," but it
8 did not specifically address generic campaign or GOTV activities in its response.

9 Although "credentialing delegates " is not explained in the LPO's response, publicly
10 available information suggests that the LPO is referring to how it determines who may vote at its
11 nominating conventions. For example, in its January 2004 newsletter reporting on its upcoming
12 January 24, 2004 nominating convention, the LPO informed potential delegates that only
13 "registered Oregon electors who have been affiliated with the Libertarian Party since
14 December 25, 2003 are eligible to participate as voting delegates free of charge." See LPO
15 News, January 2004, *available at <http://www.lporegon.org/news.html>*. In other words, what the
16 LPO appears to be describing is the process of obtaining from the Oregon Secretary of State a
17 list of registered Libertarians and checking against that list anyone who shows up at a
18 nominating convention desiring to vote. As such, it is questionable that the activity qualifies as
19 voter identification under 11 C.F.R. § 100.24(a)(4).¹⁰ At most, the activity may be voter
20 identification in the technical sense, only because the LPO nominating conventions are elections
21 under 11 C.F.R. § 100.2(e) and the LPO appears to be verifying voters' likelihood (and indeed

¹⁰ Voter identification means creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates 11 C F R § 100 24(a)(4)

1 their eligibility) of voting in an upcoming election. However, the minimal cost of obtaining the
2 list from the State would more appropriately be viewed as an allocable administrative cost of
3 putting on the convention, given that both federal and non-federal candidates were nominated,
4 and as noted, we do not count the Federal share of the LPO's administrative expenses towards
5 the \$1,000 expenditure threshold.

6 Finally, other than the communications to the general public addressed below, the
7 complaint does not provide any information supporting its allegation that the LPO performed
8 generic campaign or GOTV activities.¹¹ The LPO's response did not address those activities. In
9 fact, the available information does not show any such activity. In particular, a review of the
10 LPO's state disclosure reports does not indicate any discernible disbursements (such as expenses
11 for gasoline, travel, etc. on or in the days immediately preceding the November 2, 2004 general
12 election) for GOTV activities. Therefore, it does not appear from the available information that
13 the LPO engaged in those activities or incurred federal expenses regarding those activities.

14 4. Public Communications

15 Complainant further broadly alleges that the LPO produces public communications
16 (newsletters and website) that refer to a clearly-identified federal candidate and that promote,
17 support, attack, or oppose any federal candidate.¹² As relevant herein, the LPO acknowledges
18 distributing newsletters but asserts that its newsletters are only sent to members and contributors.

¹¹ Generic campaign activity is defined as a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate. 11 C.F.R. § 100.25

¹² Public communication is defined as a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. 2 U.S.C. 431(22); 11 C.F.R. § 100.26. Mass mailing is defined as a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. 431(23); 11 C.F.R. § 100.27.

1 The LPO provided an invoice and a postage statement regarding one of its newsletters, the one
2 closest in time to the July 19, 2004 complaint, showing that 400 copies of the newsletter were
3 mailed on July 1, 2004, and a notarized statement from an LPO staffer affirming that the LPO's
4 treasurer does not allow more than 500 copies of any newsletter to be made, including
5 reproductions. See LPO Response, Attachments C and K. The invoice showed the LPO paid
6 \$116.28 to process the July/August newsletter, including \$48.78 in postage.

7 Information on the LPO's website shows that the LPO distributed six four-page
8 newsletters during the 2004 calendar year – January, March/April, May/June, July/August,
9 September/October, and November/December. See <http://www.lporegon.org>. Based on the
10 information contained in the invoice and postage statement the LPO provided, this Office
11 reviewed the LPO's state disclosure reports for disbursements for the other five newsletters. The
12 reports show a total of \$644.23 in disbursements for what appears to be for the March/April,
13 May/June, September/October, and November/December 2004 newsletters.¹³ Therefore, the
14 total disbursements for the newsletters amount to \$761, not including the unknown cost of the
15 January newsletter.

16 All of the newsletters mention or depict both federal and state candidates, as well as other
17 LPO administrative and operational activities.¹⁴ Therefore, a portion of the LPO's disbursements
18 for the newsletters would count towards the \$1,000 federal expenditure threshold. Under the

¹³ The reports show disbursements (reported as postage) to the same entity (Mail Right, Inc) shown in the LPO invoice in the following amounts: \$253 11 on March 12, 2004, \$134 27 on April 12, 2004, \$134 59 on September 23, 2004, and \$122 26 on October 26, 2004 Presumably, each of these disbursements was for the newsletter that followed the disbursement

¹⁴ Although the LPO asserts that less than 500 of each newsletter was produced and that the newsletters were only distributed to the LPO's members and contributors, the newsletters are available to the general public through the LPO's website

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1 Commission's regulations, expenses for a publication made on behalf of more than one clearly
2 identified Federal candidate shall be attributed to each such candidate based on the proportion of
3 space devoted to each candidate as compared to the total space or time devoted to all
4 candidates ¹⁵ 11 C.F.R. § 106.1(a)(1). However, expenses for rent, personnel, overhead, general
5 administrative, fund-raising, and other day-to-day costs of political committees need not be
6 attributed to individual candidates, unless these expenditures are made on behalf of a clearly
7 identified candidate and the expenditure can be directly attributed to that candidate. *Id*
8 Applying the apportionment standard generously to the LPO's six newsletters indicates that the
9 federal portion amounts to about 15 percent of the LPO's total expenses of \$761. ¹⁶ Specifically,
10 the January newsletter, which includes the highest portion of federal content, has about 25%; the
11 March/April newsletter has about 2% federal content; the May/June newsletter has about 15%
12 federal content; the July/August newsletter has about 10% federal content; the
13 September/October newsletter has about 15% federal content, and the November/December

¹⁵ The portion of the cost of such activities allocable to such candidate(s) shall be considered a contribution to or an expenditure on behalf of such candidate(s), unless such reference is incidental to the overall activity 11 C.F.R. § 106 1(c)(3)

¹⁶ Applying the standard generously is intended to account for the unknown cost of the January newsletter

1 newsletter has about 2% federal content.¹⁷ Therefore, no more than about \$114 (15% of \$761) of
2 the LPO's disbursements for the newsletter counts toward the \$1,000 threshold.

3 As previously mentioned in the Background Section of this report, the LPO state
4 disclosure reports also show a total of \$1,100 in disbursements on August 24, 2004 for
5 advertising ("yard signs, buttons, etc.") to the Oregon Secretary of State and \$362 in
6 March/April 2004 for newspaper and periodical advertising to two local newspapers. We do not
7 know the content of the "yard signs, buttons, etc." or newspaper and periodical advertising. It is
8 unlikely that the \$1,462 total expense counts towards the \$1,000 federal expenditure threshold,
9 because a significant portion of the disbursement likely was attributable to the LPO's state
10 candidates; moreover, some may have been for so called "exempt activity" that is exempt from
11 the definition of "expenditure." Even if 50% of the disbursement is attributed to federal
12 candidates, which is extremely high, only \$731 would count towards the expenditure threshold.

13 Thus, combining all known LPO disbursements for communications to the general public
14 yield an estimated Federal share of around \$850.

15

¹⁷ The January newsletter reports on the LPO's upcoming January 24, 2004 nominating convention and depicts two Libertarian Presidential candidates on the top half of the front page. The report continues onto about one-third of the second page. The March/April newsletter reports on the LPO's May 8, 2004 nominating convention and shows a small picture of Dan Fitzgerald on the bottom one-third portion of the first page. The report continues onto the top one-third portion of the second page and identifies the successful candidates from the LPO's January nominating convention. The May/June newsletter reports on the national Libertarian Party's Presidential nominating convention, the LPO's August 7, 2004 nominating convention, and depicts the Presidential nominee, Michael Badnarik on about three-quarters of the front page. The report continues onto about slightly over one-third of the second page. The July/August newsletter reports on the results of the LPO's three nominating conventions and identifies its 2004 candidates, report on Badnarik's forthcoming October tour of Oregon, and depicts Badnarik on about three-quarters of the first page. The September/October newsletter reports on Badnarik's earlier tour of Oregon on about two-thirds of the front page, and lists the LPO's federal and state candidates on one-third of the second page. Finally, the November/December newsletter reports on the Oregon general election results on slightly over one-third of the first page but identifies only Badnarik briefly. One-third of the second page shows the election result percentages of the LPO's candidates and ballot measures.

1 **5. LPO Employees Engaging In Federal Activities**

2 Finally, the complaint broadly alleges that the LPO's employees spent more than
3 25 percent of their compensated time a month on activities in connection with a federal election.
4 Complainant cited as an example the LPO's executive director's alleged use of the LPO's office
5 to run Fitzgerald's senatorial campaign.

6 The LPO denied the allegation and provided notarized statements from the appropriate
7 individuals asserting that they did not engage in the alleged activity. In particular, the LPO
8 stated (and provided a copy of its contract showing) that, as an independent contractor, its
9 executive director has a contractual right to work for candidates on his own time, with written
10 permission from the LPO. It asserted that the executive director had not requested permission to
11 work for the Fitzgerald or Whitehead campaigns. The LPO provided a notarized statement from
12 its executive director stating that no more than two hours had been spent on Fitzgerald's and
13 Whitehead's federal campaigns - brief conversations attempting to discern whether the
14 candidates, who were running "paper" campaigns, planned on running active campaigns.¹⁸ See
15 LPO Response, Attachment I. The LPO also provided notarized statements from Fitzgerald and
16 Whitehead stating that neither the LPO nor its executive director has worked on either of their
17 campaigns. They both stated that their campaigns were dormant and that they had done no

¹⁸ The LPO executive director's reference to "paper" campaigns appears to be a recognition that Fitzgerald and Whitehead had not engaged in any meaningful campaign activity other than registering as candidates with the State. A review of the Commission database shows no filings regarding Fitzgerald's 2004 Senate candidacy. Publicly available information shows that Fitzgerald received 169% of the vote in the 2004 general election. Although nominated by the LPO as a congressional candidate on May 8, 2004, it does not appear that Whitehead's name appeared on the 2004 ballot. Documents from Oregon's Secretary of State's website show that Whitehead withdrew his candidacy on August 27, 2004. See http://www.egov.sos.state.or.us/elec/pkg_el_web_office. His name does not appear in the 2004 general election results and did not appear as a congressional candidate in the LPO's July/August or September/October 2004 newsletters or other documents. He also has not filed any documents with the Commission.

1 fundraising, advertising, or made any disbursements for their campaigns. *See* LPO Response,
2 Attachments G and H.

3 The LPO's response shows that it compensates only two individuals, its treasurer, who is
4 apparently an employee, and its executive director, who appears to be an independent contractor.
5 The only evidence supporting the allegation in the complaint is complainant's assertion that he
6 personally witnessed the activity. However, the LPO's denials are complete and the complainant
7 resigned as the LPO's treasurer in October 2003, several months before the alleged activity.

8 Although it is possible that the LPO's treasurer or executive director could have spent more than
9 25% of their working time on federal elections, it appears extremely unlikely. The LPO's state
10 disclosure reports and its newsletters indicate that it did not engage in much federal activity
11 during the 2004 calendar year. Therefore, on balance, it does not appear that either the LPO's
12 executive director or its treasurer spent more than 25% of their compensated time on acts in
13 connection with a federal election. Other than the admitted two hours, the available information
14 does not show that the LPO compensated employees spent any time on the LPO's federal
15 candidates' campaigns.

16 **6. Presidential Candidates' Receptions**

17 Though not mentioned in the complaint, information from the LPO's website shows that
18 the LPO hosted events at its headquarters on behalf of two Libertarian Presidential candidates,
19 Michael Badnarik and Gary Nolan, who spoke at the LPO's January 24, 2004 nominating
20 convention. *See* LPO News, January 2004, *available at* <http://www.lporegon.org/news.html>.
21 For example, the LPO's January 2004 newsletter announced that the two Presidential candidates
22 "will speak at a private reception for the LPO's major donors, those who have donated over

1 \$1,000 during the past year.” *Id* According to the newsletter, a public reception for the two
2 Libertarian Presidential candidates was held at the LPO’s headquarters, and it appears that a
3 private reception was also held there. The public reception was scheduled for 4:00 p.m. and the
4 private reception was scheduled for 7 00 p.m. on the same day.

5 It is unlikely that the LPO incurred expenses that would come close to reaching \$1,000 in
6 connection with the receptions. We do not know how many \$1,000 donors the LPO had in
7 2003, because only summary information is available on the Oregon Secretary of State website,
8 but the LPO’s state 2004 disclosure reports show only 14 donors who gave \$1,000 or more to
9 the LPO during calendar year 2004, a Presidential election year. It is unlikely that there were
10 more such donors in 2003. Considering the small number of donors and that the private
11 reception was held at the LPO’s headquarters, it is likely the reception did not require
12 substantial expenses for food or drinks. It is also unlikely that the public reception, which
13 presumably was less elaborate and less expensive than the private reception, resulted in
14 substantial expenses. It does not appear that the LPO used the candidates’ appearances at the
15 receptions to induce individuals to make contributions; if it had, any receipts might be
16 contributions that would count towards the \$1,000 threshold for political committee status. The
17 private reception appears more to have been a “donor maintenance” event to which only those
18 who had already donated at some time in the past were invited. Therefore, it does not appear
19 that the expenses for the receptions would contribute much towards the \$1,000 threshold.

20 **C. Conclusion**

21 Based on the available information, it does not appear that the alleged LPO activities
22 surpass the \$1,000 federal expenditure threshold required for registration and reporting under

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1 the Act.¹⁹ Accordingly, this Office recommends that the Commission find no reason to believe
2 that the LPO violated 2 U.S.C. §§ 433(a) and 434, and close the file in this matter.

3 **III. RECOMMENDATIONS**

- 4 1. Find no reason to believe the Libertarian Party of Oregon and Teresa de Bellis, in her
5 official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434.
6
7 2. Close the file in this matter.
8
9

¹⁹ As the LPO engaged in some activities involving federal candidates, disbursements for those activities and related LPO's salary and administrative expenses may be allocable under the Commission's regulations, either between federal and non-federal funds in the case of administrative costs and certain salaries, or between federal and Levin funds in the case of Federal election activity See 11 C F R § 106 7(b), (c)(1) and (2), (e)(3) As the LPO maintains only one account, it may be required to demonstrate through a reasonable accounting method that it received sufficient permissible funds under the Act to cover the federal portion of its expenses See 11 C F R § 102.5(b)(1), (2)(ii) Although the LPO's state reports shows that it accepted a total of about \$4,000 in contributions from a few corporations and labor organizations, the bulk of its reported \$63,753 in total receipts for 2004 (over 90%) appear to have been from individuals within the Act's contribution limits Therefore, it is likely that the LPO can demonstrate that it received sufficient permissible funds under the Act to cover the federal portion of the expenses at issue, and we make no recommendation regarding impermissible funds

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3. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Date

4/14/05

BY:

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